



ಕರ್ನಾಟಕ ರಾಜ್ಯಪತ್ರ

ಅಧಿಕೃತವಾಗಿ ಪ್ರಕಟಿಸಲಾದುದು
ವಿಶೇಷ ರಾಜ್ಯ ಪತ್ರಿಕೆ

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| ಭಾಗ - ೪ಎ Part - IVA | ಬೆಂಗಳೂರು, ಶುಕ್ರವಾರ, ೧೪, ಮಾರ್ಚ್, ೨೦೨೫(ಫಾಲ್ಗುಣ, ೨೩, ಶಕವರ್ಷ, ೧೯೪೬) BENGALURU, FRIDAY, 14, MARCH, 2025(PHALGUNA, 23, SHAKAVARSHA, 1946) | ಸಂ. ೧೫೨ No. 152 |
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PERSONNEL AND ADMINISTRATIVE REFORMS SECRETARIAT (ELECTIONS)

NOTIFICATION

DPAR 14 CHUTHAA 2025, Bengaluru, Dated: 14.03.2025

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi – 110001

No:82/KT-LA/200006/2023

Dated: 21st February, 2025
2 Falgun, 1946 (Saka)

NOTIFICATION

No:82/KT-LA/200006/2023 - In pursuance of Section 106 (b) of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the judgment / order of the High Court of Karnataka, Kalaburagi, dated:21.10.2024 in the Election Petition No.200006/2023.

**IN THE HIGH COURT OF KARNATAKA AT
KALABURAGI BENCH**

DATED THIS THE 21ST DAY OF OCTOBER, 2024

BEFORE

THE HON'BLE Mr. JUSTICE SHIVASHANKAR AMARANNAVAR

ELECTION PETITION No.200006/2023

BETWEEN :

SURYAKANTH NAGAMARAPALLI
S/O LATE GURUPAADHAPPA NAGAMARPALLI
AGED ABOUT 54 YEARS
AT No.8-6-394/2
KHB COLONY, NEAR SHIVA TEMPLE
BIDAR – 585 401.

... PETITIONER

(BY SRI JAIRAJ K BUKKA, ADVOCATE)

AND :

1. RAHIM KHAN
S/O MAHMOOD KHAN
AT No.9-5-162
VIVEKANANDANAGAR
IRANI COLONY
BIDAR- 585 401.
2. ANILKUMAR TUKARAM KHASHAMPURE
S/O THUKARAM
No.52, KHASIMPUR
TALUQ PAN
BIDAR – 585 401.

3. ISHWAR SINGH THAKUR
S/O NARSING RAO
No.8-11-291, KEB ROAD
FLAT No.15, S.B.H. COLONY
BIDAR – 585 401.
4. GULAM ALI
S/O MOHMED FAKIR PASHA
No.10-3-110
PAKALWADA
NEAR ABDUL FAIZ DARGA ROAD
BIDAR – 585 401.
5. ASHOK KARANJI GADGI
S/O MANNIKAPPA KARANJI
No.19-6-333
NEAR GANESHA MANDIR
SHIVNAGAR NORTH
BIDAR – 585 401.
6. MAHESH GORNALKAR
S/O MANIKAPPA
No.17-1-320
C.M.C. COLONY, MAILLOOR
BIDAR – 585 401.
7. HANAMANTH MATTE
S/O SIDDRAM
No.114, BALLUR (J)
TALUK AURAD (B)
BIDAR – 585 401.
8. GUNDOJI
S/O BABURAO
No.32, BIDRI COLONY, MAILLOOR
BIDAR – 585 401.
9. SHASHIKUMAR S POLICE PATIL CHAWLI
S/O SHAM RAO

No.153, VILLAGE CHAWLI
BIDAR TALUK
POST NAUBAD – 585 402.

10. GANESHWAR JAISURYA HOSMANI
SURESH HOSAMANI
FRONT OF URBAN BANK
OUTSIDE FATTEDARWAJA
BIDAR TALUK
BIDAR – 585 401.

...RESPONDENTS

(BY SRI SANJAY A PATIL AND
SRI SANJEEV KUMAR A BABASHETTY FOR R1 A/W
SRI ROHAN HOSMATH AND ABHISHEK GOWDA A H,
R2, R3, R4, R5 AND R9 ARE SERVED BUT UNREPRESENTED
V/O DTD. 31.11.2023 R6, R7,, R8 AND R10 IS HELD
SUFFICIENT)

THIS ELECTION PETITION IS FILED UNDER SECTION 80,
81, 84, 100 R/W 123 OF THE REPRESENTATION OF PEOPLE ACT,
1951 PRAYING TO DECLARE THE ELECTION OF THE
RESPONDENT No.1 RETURNED CANDIDATE AS VOID UNDER
SECTION 100 (1)(b) OF THE REPRESENTATION OF PEOPLE ACT
1951 AND DECLARE THE PETITIONER AS HAVING DULY BEEN
ELECTED TO THE CONSTITUENCY No.50 BIDAR ASSEMBLY
CONSTITUENCY AS THE PETITIONER RECEIVED NEXT HIGHEST
MAJORITY OF THE VALID VOTES THAN THE RETURNED
CANDIDATE I.E, RESPONDENT No.1 AND ETC.,

THIS ELECTION PETITION IS BEEN HEARD AND RESERVED
ON 21.09.2024 COMING ON FOR 'PRONOUNCEMENT' OF
ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: HON'BLE MR JUSTICE SHIVASHANKAR AMARANNAVAR

CAV ORDER

1. This petition is filed under Sections 80, 81, 84, 100 r/w Section 133 of the Representation of People Act, 1951 (*for short R.P.Act, 1951*) seeking the following prayers;

i. "Declare the election of the Respondent No.1 returned candidate as void under section 100(1) (b) of the Representation of People Act 1951.

ii. Declare the petitioner as having duly been elected to the constituency No.50 Bidar Assembly constituency as the petitioner received next highest majority of the valid votes than the returned candidate i.e. Respondent No.1.

iii. Pass such other orders as this Hon'ble court may deem fit."

2. I.A.No.1/2024 is filed by counsel for respondent No.1 under Order VI Rule 16 of Code of Civil Procedure, 1908 (for short 'CPC') r/w Section 87 of the R.P.Act, 1951 praying to strike out the pleadings in Paragraphs 6 to 24, since they are unnecessary, scandalous, frivolous and vexatious; otherwise tend to prejudice or delay the fair trial

of the election petition. I.A.No.2/2024 is filed under Order VII Rule 11(a) of CPC r/w Section 87 of the R.P.Act, 1951 praying to reject the election petition in the interest of justice and equity, since it does not disclose any cause of action. Both the applications are supported by the affidavit of respondent No.1. In the said affidavit, it is stated that;

(i) The entire pleadings set out in the election petition are liable to be struck off as they are unnecessary, frivolous and vexatious; otherwise tend to prejudice or delay in fair trial of the election petition. The necessary material facts and material particulars required under Section 83 of the R.P.Act, 1951 are conspicuously absent.

(ii) The averments in the election petition at Paragraph Nos.6 to 12 and Paragraph No.24 deal the alleged bogus votes cast in favour of respondent No.1 and the gist of the allegations is that '*few thousand fake votes*' were cast by the persons who were either dead or persons who were not in the Country and persons from the State of

Telangana have cast the votes with fabricated Aadhar cards. The petitioner has not pleaded the names of voters who have cast the alleged fake votes, names of voters who were not present in the Country and the names of voters who are alleged to be dead except stating the polling station details. The election petition is lacking any material facts with respect to identity, specific place of such bogus or fake voting, specific booth of polling and such other material facts. The averments *qua* obtaining Form 17-A register and passing of order by the learned Single Judge of this Court in W.P.No.201574/2023 dated 30.05.2023 is of no avail as it has been set-aside by the Division Bench of this Court in W.A.No.200095/2023 by order dated 30.08.2023, wherein the application of the petitioner for obtaining Form 17-A register is rejected. Therefore, the said averment being unnecessary are liable to be struck off.

(iii) The averments in Paragraph Nos.13 and 14 are vague and bald since the petitioner apart from stating that

respondent No.1 has omitted to '*add certain relevant information*', has not pleaded any material fact regarding the alleged non-disclosure.

(iv) The averment in Paragraph No.17 that respondent No.1 failed to disclose the pendency of the case registered by Lokayukta in Complaint No.3700/2017 is vexatious. Section 33-A(1)(i) of the R.P.Act, 1951 requires a candidate to furnish criminal antecedents, where he is accused of any offence punishable with imprisonment for two years or more in a pending case; in which a charge has been framed by a Court of competent jurisdiction. A mere complaint allegedly filed against respondent No.1, without pleading any material fact as to the initiation of criminal prosecution or registration of First Information Report, framing of charges etc., is bald and liable to be struck off as unnecessary and vexatious.

(v) The averments in Paragraph No.23, respondent No.1 has not disclosed landed properties of Nursing College

and 'D' and 'B' Pharmacy college buildings is whimsical and completely a bald statement. The R.P.Act, 1951, Rule 4-A of the Conduct of Election Rules, 1961 and Form No.26 therein and the law laid down by the Hon'ble Supreme Court requires that every candidate to disclose their assets and the assets of his or her spouse and does not require the candidate to state that position one holds in any Institution. Therefore, it is bald, frivolous and vexatious.

(vi) The averments in Paragraph Nos.15 and 16 and Paragraph Nos.20 to 22 deals with issue of guarantee cards allegedly amounting to corrupt practices. If the entire allegations are taken to be true, the same would not amount to corrupt practices since the issue whether '*promises*' made in the election manifesto would amount to corrupt practices is covered by the judgment of the Hon'ble Supreme Court in ***S.Subramaniam Balaji Vs. State of Tamil Nadu*** reported in **(2013) 9 SCC 659**, wherein it has been categorically held that Section 123 of R.P.Act, 1951

relates to corrupt practice by a candidate or his agent and does not include within its ambit, any promise made by a political party which in essence is a future promise made if a Government is formed. The allegation in the election petition that respondent No.1 printed the guarantee cards is bald and abuse of process of Court; or there is no material facts and necessary material particulars as to the date, time, place and persons involved in the alleged act of printing the cards. The material fact as to the date, time and place for distribution of alleged guarantee cards to the voters coupled with the element of bargain is conspicuously absent in the pleadings; rendering the entire allegations are vague and rather vexatious.

(vii) The allegation in Paragraph No.21 of the petition that respondent No.1 has given speeches on social media and other platforms without reference to specific dates, time and events, is thus liable to be struck off as being vexatious. The entire allegation contained in the election

petition do not meet the statutory requirement under the provisions of R.P.Act, 1951 and therefore, are liable to be struck as vexatious, frivolous and unnecessary.

(viii) The averments in the petition does not disclose the cause of action for presentation of election petition under Section 86 of the R.P.Act, 1951. While challenging the election under Section 80 of the R.P.Act, 1951, the petitioner must plead concise statements of material facts on which he relies and set forth full particulars of any corrupt practices and date and place of commission of such practices in accordance with Section 83 of the R.P.Act, 1951.

3. The petitioner has filed statement of objections to both I.A.Nos.1 and 2 of 2024, wherein it is contended that;

(i) The petitioner has provided specific and cogent details such as polling stations where the alleged bogus voting took place, the approximate number of such votes and the *modus operandi* employed. The names of the

individual voters are not necessary at this stage and can be proved through evidence during the trial, including by summoning the relevant records from the Election Commission. The petitioner has pleaded that the bogus votes have materially affected the election result. There is a serious allegation in Lokayukta Complaint No.3700/2017 which is pending against respondent No.1. The non-disclosure of landed properties, nursing college and pharmacy college buildings are also material facts that go to the eligibility and qualification of respondent No.1 to contest the election. The complaint filed by the Lokayukta is a relevant fact that should have been disclosed by respondent No.1 in his affidavit regardless of the stage of the complaint. The allegations regarding the guarantee cards cannot be mechanically struck out based on respondent's misplaced reliance. The distribution of guarantee cards with the photographs and the name of respondent No.1 amounts to corrupt practice under Section

123 of the R.P.Act, 1951 as it is a direct attempt to bribe and influence the voters. The speeches causing enmity between religious communities are not vague or lacking in material facts. Speeches made by respondent No.1 on social media and other platforms during the election campaign was with deliberate intent of promoting hatred and disharmony between different religious and linguistic groups. The specific details such as date, time and exact words spoken are not essential at this stage and can be provided through evidence during the trial. Striking out these pleadings solely on the ground that they lack minute details would be a gross injustice and would prematurely shut out a valid and substantial ground of challenge to the election. The striking out pleadings under Order VI Rule 16 of CPC is a drastic measure and should be resorted to only in the rarest of rare cases, where the pleadings are *ex facie* vexatious, frivolous or an abuse of process of the Court. The pleadings in the present election petition disclose a

serious and valid cause of action challenging the election of respondent No.1 on multiple grounds. Striking them out at the threshold would amount to a summary dismissal of the election petition without a trial, which would be contrary to the principles of natural justice and fair play.

(ii) The petitioner has a fundamental right under Article 329(b) of the Constitution of India to challenge the election of respondent No.1 by presenting an election petition before this Court. This right cannot be lightly taken away by striking out substantial portions of the pleadings at the behest of the very person whose election is under challenge.

(iii) The election petition disclose a valid cause of action under Section 86 of R.P.Act, 1951. The petitioner has raised a substantive grounds challenging the election such as bogus votes, improper acceptance of nomination paper, non-disclosure of information, alleged hate speech and luring voters with false promises in the form of

guarantees and they are supported by the documents. The election petition complies with the requirement of Section 86 of R.P.Act, 1951. The petitioner has provided concise statements of material facts and particulars of the corrupt practices alleged. The guarantee cards that were distributed by respondent No.1 with the photograph on the same would clearly depict how the gifts were promised to each and every person. Respondent No.1 has committed an offence of luring voters in the name of religion on numerous occasions, all of which are document on camera and telecasted and they would be provided to this Hon'ble Court at the time of evidence along with the certificate in proper format. The Hon'ble Court may not delve into the merits of the case at this stage as the purpose of Order VII Rule 11 of CPC is only to determine whether the petitioner discloses a cause of action and not to assess the strength of the evidence or the likelihood of success. The petitioner has provided specific details of the alleged corrupt practices

including dates, places and names of the parties involved as required under Section 83 of the R.P.Act, 1951. The election petition disclose a valid cause of action and complies with the requirements of Section 83 of the R.P.Act, 1951. With these objections, counsel for the petitioner has prayed to dismiss both I.A.Nos.1 and 2 of 2024.

4. Heard learned counsel for respondent No.1 and learned counsel for the petitioner on I.A.Nos.1 and 2 of 2024.

5. These applications are filed contending that the averments in the petition are cryptic, bald and vague and does not constitute the ground for declaring the election of returning candidate as void. Learned counsel for respondent No.1 would contend that the concise statement of material facts as required are absent in the petition.

6. The Hon'ble Apex Court in the case of **Samant N Balkrishna And Another vs. George Fernandez and Others.** reported in **1969 (3) SCC 238** has observed thus;

29. Having dealt with the substantive law on the subject of election petitions we may now turn to the procedural provisions in the Representation of the Peoples Act. Here we have to consider Sections 81, 83 and 84 of the Act. The first provides the procedure for the presentation of election petitions. The proviso to sub-section alone is material here. It provides that an election petition may be presented on one or more of the grounds specified in sub-section (1) of Section 100 and Section 101. That as we have shown above creates the substantive right. Section 83 then provides that the election-petition must contain a concise statement of the material facts on which the petitioner relies and further that he must also set forth full particulars of any corrupt practice that the petitioner alleges including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice. The section is mandatory and requires first a concise statement of material facts and then requires the fullest possible

particulars. What is the difference between material facts and particulars? The word "material" shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. There may be some overlapping between material facts and particulars but the two are quite distinct. Thus material facts will mention that a statement of fact (which must be set out) was made and it must be alleged that it refers to the character and conduct of the candidate that it is false or which the returned candidate believes to be false or does not believe to be true and that it is calculated to prejudice the chances of the petitioner. In the particulars the name of the person making the statement, with the date, time and place will be mentioned. The material facts thus will show the ground of corrupt practice and the complete cause of action and the particulars will give the necessary information to present a full picture of the cause of action. In stating the material facts it will not do

merely to quote the words of the section because then the efficiency of the words "material facts" will be lost. The fact which constitutes the corrupt practice must be stated and the fact must be correlated to one of the heads of corrupt practice. Just as a plaint without disclosing a proper cause of action cannot be said to be a good plaint, so also an election petition without the material facts relating to a corrupt practice is no election petition at all. A petition which merely cites the sections cannot be said to disclose a cause of action where the allegation is the making of a false statement. That statement must appear and the particulars must be full as to the person making the statement and the necessary information. Formerly the petition used to be in two parts. The material facts had to be included in the petition and the particulars in a schedule. It is inconceivable that a petition could be filed without the material facts and the schedule by merely citing the corrupt practice from the statute. Indeed the penalty of dismissal summarily was enjoined for petitions which did not comply with the requirement. Today the particulars need not be separately included in a schedule but the distinction remains. The entire and complete cause of action must be in the

petition in the shape of material facts, the particulars being the further information to complete the picture. x x x x x x .”

7. The Hon’ble Apex Court in the case of **Anil Vasudev Salgaonkar vs. Naresh Kushali Shigaonkar** reported in **2009 (9) SCC 310** has observed thus;

49. In this view of the matter, the court trying the election petition can act in exercise of the powers of the Code including Order 6 Rule 16 and Order 7 Rule 11(a) of the Code. These provisions are set out as under:

"16. Striking out pleadings.- The court may at any stage of the proceedings order to be struck out or amended any matter in any pleading-

(a) which may be unnecessary, scandalous, frivolous or vexatious, or

(b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or

(c) which is otherwise an abuse of the process of the court.

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11. Rejection of plaint.- The plaint shall be rejected in the following cases-

(a) where it does not disclose a cause of action;"

50. The position is well settled that an election petition can be summarily dismissed if it does not furnish the cause of action in exercise of the power under the Code of Civil Procedure. Appropriate orders in exercise of powers under the Code can be passed if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the election petition are not complied with.

51. This Court in Samant N. Balkrishna case has expressed itself in no uncertain terms that the omission of a single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to a corrupt practice is not an election petition at all. In Udhav Singh v. Madhav Rao Scindia the law has been enunciated that all the primary facts which must be proved by a party to establish a cause of action or his defence are material facts. In the context of a charge of corrupt practice it would mean that the basic facts which constitute the ingredients of the particular corrupt practice alleged

by the petitioner must be specified in order to succeed on the charge. Whether in an election petition a particular fact is material or not and as such required to be pleaded is dependent on the nature of the charge levelled and the circumstances of the case. All the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of Section 83(1)(a). An election petition therefore can be and must be dismissed if it suffers from any such vice. The first ground of challenge must therefore fail.

57. It is settled legal position that all "material facts" must be pleaded by the party in support of the case set up by him within the period of limitation. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact will entail dismissal of the election petition. The election petition must contain a concise statement of "material facts" on which the petitioner relies."

8. The Hon'ble Apex Court in the case of ***Kanimozhi Karunanidhi vs. A Santhana Kumar and Others*** reported in **2023 SCC Online 573** has observed thus;

28. The legal position enunciated in aforestated cases may be summed up as under:-

i. Section 83(1)(a) of RP Act, 1951 mandates that an Election petition shall contain a concise statement of material facts on which the petitioner relies. If material facts are not stated in an Election petition, the same is liable to be dismissed on that ground alone, as the case would be covered by Clause (a) of Rule 11 of Order 7 of the Code.

ii. The material facts must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action, that is every fact which it would be necessary for the plaintiff/petitioner to prove, if traversed in order to support his right to the judgment of court. Omission of a single material fact would lead to an incomplete cause of action and the statement of plaint would become bad.

iii. Material facts mean the entire bundle of facts which would constitute a complete cause of action.

Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary.

iv. In order to get an election declared as void under Section 100(1)(d)(iv) of the RP Act, the Election petitioner must aver that on account of non-compliance with the provisions of the Constitution or of the Act or any rules or orders made under the Act, the result of the election, in so far as it concerned the returned candidate, was materially affected.

v. The Election petition is a serious matter and it cannot be treated lightly or in a fanciful manner nor is it given to a person who uses it as a handle for vexatious purpose.

vi. An Election petition can be summarily dismissed on the omission of a single material fact leading to an incomplete cause of action, or omission to contain a concise statement of material facts on which the petitioner relies for establishing a cause of action, in exercise of the powers under Clause (a) of Rule 11 of Order VI CPC read with the mandatory requirements enjoined by Section 83 of the RP Act."

9. The Hon'ble Apex Court in the case of **Ram Sewak Yadav vs. Hussain Kamil Kidwai and Others** reported in **AIR 1964 SC pg 1249** has observed thus;

10. To support his claim for setting aside the election the petitioner has to make precise allegations of material facts which having regard to the elaborate Rules are or must be deemed to be within his knowledge. The nature of the allegations must of course depend upon the facts of each case. But if material facts are not stated, he cannot be permitted to make out a case by fishing out the evidence from an inspection of the ballot papers."

10. The co-ordinate Bench of this Court in the case of **Ambanna Hanumappa Naik vs. Sharnappa and others** reported in **1972 SCC Online Kar 232** equivalent citation **AIR 1973 Mysuru 261** has observed thus;

26. Coming next to Para VIII of the petition, it relates to proxy votes cast on behalf of the living as well as dead persons. The places where such voting is alleged to have occurred have been mentioned. There is no reference whatsoever to the names of persons who voted and of those who were

impersonated, whether dead or alive. There is also no allegation as to whether the result of the election has been materially affected on this account. In short, the allegations are of a highly vague and general character. It is, therefore, clear that the petitioner does not disclose a cause of action at all. Hence there is nothing which calls for an amendment. By the amendment for the first time it is sought to refer to a list of 38 persons who were said to have been impersonated. Again, even in the amendment there is no reference to the fact whether such voters in the list have been dead or alive. The true legal position in this regard can be gathered from the following observations of a Division Bench of this Court in H. Nagappa v. G. Venkategowda, (1964-2 Mys LJ 51). The enunciation in question occurs at page 57 of that report and reads thus:

"..... The question whether any particular voter was dead or was in jail or that he was not entitled to vote, is a material fact and unless that fact is alleged in the pleadings, it is extremely difficult for any respondent to disprove the evidence tendered by the petitioners. In C.R. Narasimhan v. Election Tribunal, Mudurai, ((1958) 16 Ele LR 327 (Mad)),

the High Court of Madras held that a general allegation in the election petition that impersonation of dead persons has taken place, does not entitle the petitioner to lead evidence when the petitioner does not give in the election petition itself the names of the persons who are said to have been impersonated or at least before the period of limitation for filing the election petition expires, and that if a list of names of impersonated voters has been in the petition, he cannot be permitted to prove during the trial that other persons whose names were not included in the list of names supplied by him, had also been impersonated.” Hence amendment proposed to paragraph VIII of the petition, is disallowed.”

11. The Hon’ble Apex Court in the case of **Kunwar Nripendra Bahadur Singh vs. Jai Ram Verma and Others** reported in **(1977) 4 SCC Pg 153** has observed as under;

25. Thus in a catena of cases this Court has consistently taken the view that the finality of the electoral roll cannot be challenged in an election petition even if certain irregularities had taken place in the preparation of the electoral roll or if

subsequent disqualification had taken place and the electoral roll had on that score not been corrected before the last hour of making nominations. After that dead-line the electoral roll of a constituency cannot be interfered with and no one can go behind the entries except for the purpose of considering disqualification under Section 16 of the 1950 Act.

26. The election could be set aside only on the grounds mentioned in Section 100 of the 1951 Act. In this case reliance was placed under Section 100(1)(d)(iii) for invalidating the election on the ground of reception of void votes. We have already shown that the electoral roll containing the particular names of voters was valid and there is, therefore, no question of reception of any vote which was void. There is, thus, no substance in that ground for challenging the election.

12. It is alleged in the petition that few thousand fake votes were cast by the persons who were either dead or persons who were not in the Country. Persons from State of Telengana have cast the votes with fabricated Aadhar cards. The particulars of dates, persons, their death certificate, names of the persons residing abroad and

names of voters who have created bogus Aadhar cards who are residents of Telengana State are not pleaded in the petition. There is no allegation as to whether the result of the election has been materially affected on that account. In short, the allegations are of highly vague and general character. It is therefore, clear that the petition does not disclose the cause of action at all. The particulars of voters who were dead or who were residing abroad is a material fact and unless that fact is alleged in the pleadings, it is extremely difficult for any respondent to disprove the evidence tendered by the petitioner. The said aspect has been considered by the Co-ordinate Bench of this Court in *Ambanna Hanumanthappa's case supra*.

13. There is an allegation in the petition that respondent No.1 failed to disclose the pendency of the case registered by Lokayukta in Complaint No.3700/2017. The details of the said complaint are not furnished in the petition. No document has been produced in that regard. Section

33-A(1)(i) of the R.P.Act, 1951 requires a candidate to furnish criminal antecedents, where he is accused of any offence punishable with imprisonment for two years or more in a pending case; in which a charge has been framed by a Court of competent jurisdiction. A mere complaint allegedly filed against respondent No.1, without pleading any material fact as to the initiation of criminal prosecution or registration of First Information Report, framing of charges, is thus, bald and unnecessary.

14. It is alleged in the petition that respondent No.1 has not disclosed landed properties as he having a Nursing college building and 'D' and 'B' Pharmacy college buildings in the State and he is a Chairperson of various colleges in Karnataka State. The said averment contained in Paragraph No.23 is completely bald statement. As per the R.P.Act, 1951, Rule 4-A of the Conduct of Election Rules, 1961 and Form No.26 therein requires every candidate to disclose their assets and the assets of his or her spouse and does

not require the candidate to state that position one holds in any Institution. Therefore, the said averment is bald, frivolous and vexatious.

15. In Paragraph No.21 of the petition, it is alleged that respondent No.1 has given speeches on social media and other platforms allegedly causing enmity between the classes. The specific dates, time and places of the alleged speeches; the words so spoken to cause such enmity, the names and description of different classes of citizens which caused otherwise attempted in connection to the election is not even pleaded.

16. There is an allegation in the pleading that there is an improper acceptance of nomination of respondent No.1 as his affidavit does not contain the signature of the Notary on each page of the affidavit. On perusal of the affidavit of respondent No.1, respondent No.1 has affixed his signature on all the pages of the affidavit. There is a seal of the

Notary on each page of the affidavit and the affidavit has been sworn to before the Notary and for that, there is a signature and seal of the Notary on the last page of the affidavit. No doubt, the Notary has not affixed his signature on each page of the affidavit, but stamp of the Notary is contained in each page of the affidavit. The said affidavit should be in Form 26 as required under Rule 4A of the Conduct of Election Rules, 1961. Under the notes below the Form 26 at Sl.No.5, it is stated that each page of the affidavit should be signed by the deponent and the affidavit should bear on each page, the stamp of the Notary or Oath Commissioner or the Magistrate before whom the affidavit is sworn.

17. Considering the said aspect, the signature of the Notary on each page of the affidavit is not mandatory. Each page of the affidavit contains stamp of the Notary. The Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial

character. The said alleged defect is not of substantial character so as to reject the nomination paper as per Sub Section (4) of Section 36 of the Conduct of Elections Rules, 1961.

18. There is an allegation in the petition that respondent No.1 has got printed the guarantee card which is at Annexure-M and it contains photograph of respondent No.1. On perusal of the said Annexure-M – guarantee card, it is a guarantee to the people of Karnataka by C.L.P Leader and President of K.P.C.C. The said five guarantees are contained in the manifesto of Congress party.

19. The Hon'ble Apex Court has considered the promises made in the election manifesto is the corrupt practice or not in the case of ***Subramanian Balaji Vs. State of Tamil Nadu*** reported in ***2013 (9) SCC Page 659***, wherein it is held as under;

61. *As appealing this argument may sound good, the implementation of this suggestion becomes difficult on more than one count:*

61.1. *Firstly, if we are to declare that every kind of promises made in the election manifesto is a corrupt practice, this will be flawed. Since all promises made in the election manifesto are not necessarily promising freebies per se, for instance, the election manifesto of a political party promising to develop a particular locality if they come into power, or promising cent per cent employment for all young graduates, or such other acts. Therefore, it will be misleading to construe that all promises in the election manifesto would amount to corrupt practice. Likewise, it is not within the domain of this Court to legislate what kind of promises can or cannot be made in the election manifesto.*

61.2. *Secondly, the manifesto of a political party is a statement of its policy. The question of implementing the manifesto arises only if the political party forms a Government. It is the promise of a future Government. It is not a promise of an individual candidate. Section 123 and other relevant provisions, upon their true construction,*

contemplate corrupt practice by individual candidate or his agent. Moreover, such corrupt practice is directly linked to his own election irrespective of the question whether his party forms a Government or not. The provisions of the RP Act clearly draw a distinction between an individual candidate put up by a political party and the political party as such. The provisions of the said Act prohibit an individual candidate from resorting to promises, which constitute a corrupt practice within the meaning of Section 123 of the RP Act. The provisions of the said Act place no fetter on the power of the political parties to make promises in the election manifesto.

61.3. Thirdly, the provisions relating to corrupt practice are penal in nature and, therefore, the rule of strict interpretation must apply and hence, promises by a political party cannot constitute a corrupt practice on the part of the political party as the political party is not within the sweep of the provisions relating to corrupt practices. As the rule of strict interpretation applies, there is no scope for applying provisions relating to corrupt practice contained in the said Act to the manifesto of a political party.

84.1. After examining and considering the parameters laid down in Section 123 of the RP Act, we arrived at a conclusion that the promises in the election manifesto cannot be read into Section 123 for declaring it to be a corrupt practice. Thus, promises in the election manifesto do not constitute as a corrupt practice under the prevailing law.”

20. In view of the above decision of the Hon’ble Apex Court, the said guarantees contained in Annexure – M are found in the election manifesto and they did not constitute corrupt practices. Considering the similar case with regard to the promises made in the election manifesto in a challenge to election, the Co-ordinate Bench in E.P.No.14/2023 has rejected the election petition under Order VII Rule 11(a) of C.P.C. In a similar case, the Co-ordinate Bench in E.P.No.15/2023 relying upon the decision of the Hon’ble Apex Court in the case of *Subramanian N. Balaji’s* case *supra*, the manifesto of Indian National Congress promising five guarantees cannot be held to be

corrupt practice and rejected the election petition as it does not disclose the cause of action. The said order has been challenged before the Hon'ble Apex Court in Civil Appeal No.6263/2024 which came to be dismissed affirming the order of the Co-ordinate Bench of this Court. In view of the above, the omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad.

21. In view of the above, the applications I.A.Nos.1 and 2 of 2024 filed by respondent No.1 deserves to allowed. Accordingly, they are ***allowed***. Consequently, the petition is ***rejected*** as it does not disclose the cause of action.

In view of disposal of the petition, all pending applications stands disposed of.

Sd/-
(SHIVASHANKAR AMARANNAVAR)
JUDGE

GH

By Order

(B C PATRA)
SECRETARY
ELECTION COMMISSION OF INDIA

(MADHU A.C)
Assistant Chief Electoral Officer
& E/o Under Secretary to Government
D.P.A.R (Elections)